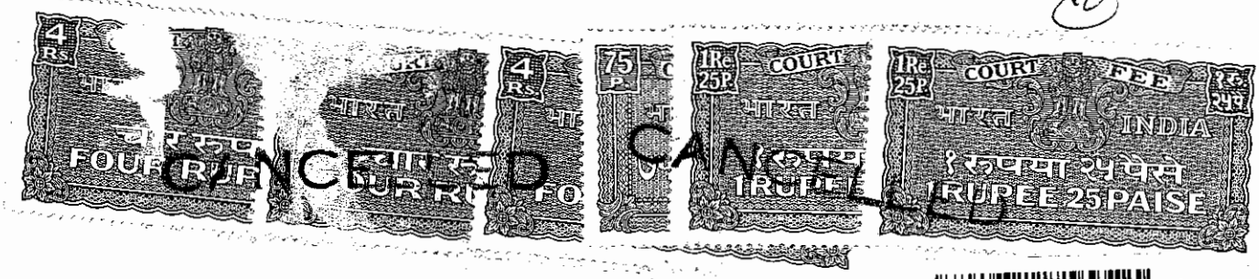

CF 154

CF0000059798

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 2312 Of 1998

(Memorandum of Appeal Under Section 374 of Cr.P.C.)

APPELLANT : Pramod Kumar Koltha S/o Budheshwar Koltha (Gupta) aged 26 years, r/o Village Kukurda thana Chakradharnagar district Raigarh (MP).

Versus

RESPONDENT : The State of Madhya Pradesh Through the District Magistrate Raigarh (MP).

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MEMORANDUM OF APPEAL UNDER SECTION 374 OF Cr.P.C.

Conviction

(20)

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr.Appeal No. 2312/1998

Pramod Kumar Koltha

Vs.

The State of Madhya Pradesh (now State Chhattisgarh)

Post for Judgment : 21.04.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.2312/1998

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Pramod Kumar Koltha

Versus

The State of Madhya Pradesh (now State of Chhattisgarh)

Shri H.S.Patel, Counsel for the appellant.

Ms. Sunita Jain, Panel Lawyer for the State.

JUDGMENT

(Delivered on this 24th day of April 2006)

This appeal is directed against the judgment dated 25.09.1998 delivered by Shri Ajit Singh, 1st Additional Sessions Judge, Raigarh in Sessions Case No.119/96 whereby the appellant was convicted under Section 324 I.P.C. and was sentenced to undergo R.I. for six months and a fine of Rs.1,000/- and in default to undergo additional R.I. for two months.

2. The accused-appellant was in custody during trial from 25.4.1996 to 2.5.1996 i.e. for eight days and after conviction from 25.09.1998 till 28.10.1998, thus in all one month eleven days.

3. Briefly stated the prosecution story is that the appellant had some property dispute with Daulatram P.W.2. On 25.4.1996 at about 8.00 A.M. while Daulatram P.W.2 was buying vegetables in the market, the appellant assaulted Daulatram with a sickle thrice on the neck. Lalat Prasad P.W.6 intervened and also sustained some injury. The appellant ran away thereafter. F.I.R. was lodged at 11.00 A.M. on the same day by Daulatram in P.S. Chakradhar Nagar, District Raigarh vide

Ex.P.2. Daulatram was sent for medical examination. Dr. A.K. Jain P.W.5 examined him and found an incised wound sized 3 ½" x 1" x 1" on right side of neck covering outer nape of neck and lateral aspect of neck. Bleeding had sustained. It was opined by the Doctor that the injury was simple in nature and could be caused by sharp and hard object within four hours duration. One sickle was seized from the appellant vide Ex.P.8 on the same day. Lalat Prasad P.W.6 was also sent for medical examination. Dr. A.K.Jain found a self-inflicted injury of sickle shape sized 1" in length with 1/8" in breadth and partial skin deep with abrasion at the initial site on lateral aspect of right forearm. There was no bleeding from the site of wound. Dr. Jain P.W.5 opined that the injury was self-inflicted and fabricated within four hours duration. He further opined that the injury sustained by Daulatram was not dangerous to life but if not treated in time could result in death in the longer duration due to infection or septicemia. After completion of investigation, prosecution under Section 307 I.P.C. was launched against the appellant.

4. Charge under Section 307 I.P.C. was framed against the appellant who abjured the guilt, pleaded false implication in defence and examined himself as a witness. The prosecution examined as many as 9 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted the appellant under Section 324 I.P.C. and sentenced him to imprisonment as aforesaid in paragraph 1 (supra).

5. Shri H.S.Patel, learned counsel for the appellant has argued that the appellant was falsely implicated since in the opinion of Dr. A.K.Jain P.W.5 the injury sustained by Lalat Prasad P.W.6 was self-inflicted injury. The testimony of Daulatram P.W.2 that he was assaulted thrice by the appellant was also not corroborated by

medical evidence. It was argued that the injury sustained by Daulatram was also self-inflicted to falsely implicate the appellant. On the other hand, the learned Panel Lawyer Ms. Sunita Jain has argued in support of the impugned judgment.

6. Having heard the rival contentions, I have perused the record. Undoubtedly the testimony of Daulatram P.W.2 is highly exaggerated since, according to him, the appellant had assaulted him thrice by the sickle firstly on his neck and then twice on the back. This is not corroborated by medical evidence since no injury on his back was found. Daulatram has also stated that the appellant was chasing and assaulting him repeatedly which is also not corroborated by Radheshyam P.W.1 and Lalat Prasad P.W.6. Be as it may, so far as the single assault by the appellant on Daulatram by a sickle is concerned, the testimony of Daulatram is fully corroborated by Radheshyam P.W.1 and Lalat Prasad P.W.6 as also by Dr. A.K.Jain P.W.5. Merely because Daulatram has in his testimony exaggerated the version of assault, it cannot be wholly brushed aside as unworthy of credit. The above evidence finds corroboration by the prompt F.I.R. lodged by Daulatram vide Ex.P.2. It is thus well established by the prosecution that on 25.4.1996, the appellant had assaulted Daulatram by a sickle on the neck causing a simple injury. Dr. A.K.Jain P.W.5 has admitted in paragraph 5 that on examination of Daulatram, the injury on the neck was not bleeding. Daulatram had thus sustained only one injury which was a simple injury, not dangerous to life. It has also emerged in the evidence of Daulatram that he got married two days after the incident. Thus, the evidence led by the prosecution establishes the guilt of the appellant under Section 324 I.P.C. beyond doubt. The conviction of the appellant under Section 324 I.P.C. is, therefore, well founded and does not call for any interference.

7. So far as the sentence awarded by the trial Judge is concerned, some facts need to be mentioned here. In this appeal, the appellant was released on bail on 28.10.1998 vide order dated 14.10.1998 passed by this Court and was directed to remain present before the Registry on 8.1.99 and on subsequent dates to be given. However, he absented from 18.12.2000. A warrant of arrest against the appellant was sent to the Superintendent of Police, Raigarh who reported that the appellant was of unsound mind for the last 5 years to such an extent that his hands and feet were tied up with chain and he was kept inside a room. Some papers of treatment in the Psychiatry Department of Medical College, Sambalpur were also sent with the report.

8. Considering the above and the facts and circumstances of the case, especially the very simple nature of injury sustained by Daulatram and the fact that the appellant has already undergone imprisonment for one month and eleven days, in my considered opinion, the interest of justice would be served if the appellant is sentenced to imprisonment already undergone by him and a fine of Rs.3,000/- "payable" before 20.05.2006 and in default to undergo simple imprisonment for three months.

"In the result, the appeal is partly allowed."

9. If the appellant fails to deposit the amount of fine of Rs.3,000/- before 20.05.2006, a warrant of arrest shall be issued by the trial Judge and the appellant shall be sent to jail to undergo the sentence awarded in default of payment of fine.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani